HIGH COURT OF UTTARANCAHL AT NAINITAL

A.O. No. 422 of 2001
(Old No. 679 of 1996)

Smt. Bhoori & others ..... Appellants

Versus

New India Insurance Co. & another... Respondents

Sri Dinesh Chauhan and Sri Zafar Siddiqui, Advocate for the petitioners
Sri R.B. Agrawal and J.S. Virk, Advocate for respondents

Date: June ,2004

Hon. M.M. Ghildiyal J.
Hon. Rajesh Tandon J.

Delivered by Hon. Rajesh Tandon J.

This is an appeal against the judgment and award dated 21.6.96 passed by the Motor Accident Claims Tribunal, Nainital.

Briefly stated the facts giving rise to the present appeal are that appellants filed a petition under section 166A of Motor Vehicle Act for grant of compensation on account of death of Sri Ganga Ram husband of appellant no.1 and father of rest of the petitioners, in a motor vehicle accident.

The petitioners have stated that on 23.10.1995, the deceased boarded on Bus No.USI 7229 at Kichcha for going to Khatima. The bus was being driven rashly and negligently by its driver due to which it collided with a tractor trolley which was coming from the opposite direction. Sri Ganga Ram sustained fatal injuries in the accident and he succumbed to the injuries instantaneously. At the time of accident the age of the deceased was 46 years and he was earning Rs.3000/- per month. The petitioners have claimed Rs.20,00,000/- as compensation.

Respondents have contested the petition and have filed their respective written statements. They admitted the accident and the death of the deceased due to the accident. However, they have denied the rash and negligent driving by the driver of the bus.

On the pleadings of the parties the following issues were framed by the learned Tribunal:

1. Whether the accident as detailed in paragraph 23 of the petition, took place due to rash and negligent driving of bus registration no. USI 7229 ?
2. Whether the petitioners are entitled to get compensation from the respondents ?
3. Whether the deceased Ganga Ram was himself responsible for the accident ?

The learned Tribunal has decided issue no.1 in favour of the petitioners and has held that the accident was taken place due to rash and negligent driving of the bus involved in the accident. In reply of issue no.2 the learned Tribunal awarded a sum of Rs.1,54,000/- to the petitioners. Feeling aggrieved the present appeal has been filed by the petitioners appellants.

We have heard the learned counsel for the parties and have perused the entire evidence on record.

The main contention of the appellants is that the learned Tribunal has not properly calculated the amount of compensation and the amount awarded, as compensation is too meagre.

The claimants have stated in their claim petition that the deceased was working with P.W.3 Chain Singh as his manager and was earning Rs.3,000/- per month. His wife P.W.1 Bhoori has stated that the deceased was employed as a labourer with Chain Singh. In the absence of any documentary evidence the income of the deceased may be presumed as Rs.20,000/- per annum. After deducting one third of the amount i.e. Rs.7,000/- for the own expenses of the deceased if he would have been alive, the total annual pecuniary loss to the petitioners comes to Rs.13,000/-.

At the time of his death the deceased was 46 years old and as such a multiplier of 12 has to be applied for calculating the total dependency of the petitioners on the deceased. Thus by multiplying the annual dependency of Rs.13,000/- by 12, the total pecuniary loss comes to Rs.1,56,000/-. The petitioner no.1 Smt. Bhoori is also entitled for compensation on account of loss of consortium and other petitioners are also entitled for grant of compensation on account of loss of love and affection of their father. The petitioners are also entitled for the grant of expenses incurred in the last rites of the deceased. In our opinion a consolidated sum of Rs.44,000/- on all these counts would meet the ends of justice. Thus the petitioners are entitled to get a sum of Rs.2,00,000/ as compensation.

The findings of the learned Tribunal on the issue of rash and negligent driving have not been challenged by either of the parties in the appeal.

The appeal is allowed with costs. The petitioners are awarded a sum of Rs.2,00,000/- (Rs. Two lakhs only) along with pendente lite and future interest @ 9% per annum.

(Rajesh Tandon J.) **(M.M. Ghildiyal J.)**

June 29, 2004
*Dhyani